



OFFICE OF THE CITY CLERK

REPORT

REPORT TO THE COMMITTEE ON RULES, FINANCE AND INTERGOVERNMENTAL RELATIONS

DATE: May 2, 2001

REPORT NO.: 01-02

SUBJECT: PROPOSED AMENDMENTS TO SAN DIEGO MUNICIPAL CODE
RELATED TO ELECTIONS, CHAPTER 2, ARTICLE 7

ISSUE

In 1999 the City Council approved major amendments to the City's Elections Code. In administering the revised code, certain issues and questions have been raised related to the candidate nomination process and sample ballot references. The City Clerk has determined that amendments are needed to clarify the language of the code and to address the issues that have been identified.

Amendments are also proposed related to filling vacancies in elective offices: (a) to elaborate more specifically on filling a vacancy in the office of the Mayor or City Attorney; and (b) to streamline the appointment process so vacancies may be filled in a more expeditious manner.

RECOMMENDATION

Adopt the proposed amendments to the City's Election Code, Chapter 2, Article 7 of the San Diego Municipal Code.

DISCUSSION

A number of amendments are being proposed to several divisions of the City's Elections Code. Specifically, the proposed amendments are as follows:

Division 2 -- Nominations

Section 27.0213 ("Signing of Nominating Petitions") has been amended to specify that if someone signs more than one candidate's nominating petition, the signature will

count only on the first petition which is filed and in which the signature is used to qualify a candidate. This is currently the Clerk's administrative practice.

Division 6 -- Ballots for Candidates

Section 27.0608 ("Designation to Remain the Same") has been amended with the addition of subsection (b) to specify the process for changing a designation of occupation in the case of a special election to fill a vacated elective office.

Section 27.0620 ("Statement of Candidates' Qualifications") has been amended to specify that quotations are allowed in a candidate's statement of qualifications for the ballot. These quotations must be authorized, in writing, by the individual or organization quoted. Additional amendments clarify when organizational references may be included in the statement without written authorization.

Section 27.0621 ("Certain Content Prohibited in Statement of Qualifications"). This section is intended to prohibit references to other candidates, officeholders or City employees in a candidate's statement of qualifications. It has been amended to clarify that the use of an officeholder's or employee's name may be authorized in the statement pursuant to Section 27.0620. Language referencing "allusions" to other candidates has been deleted as being overly broad and difficult to administer.

Division 7 — General Provisions for Filling Vacancies in Elective Offices

Section 27.0701 ("Purpose and Intent") has been amended to more closely reflect the language of the City Charter.

Section 27.0709 ("Term of Office"). Subsections (b) and (d) have been added to specify the term of office for an individual either elected or appointed to fill a vacancy in the office of the Mayor or City Attorney.

Division 8 — Procedure for Filling Vacancies in Elective Offices by Appointment

Section 27.0801 ("Purpose and Intent") has been amended to specify the time frame for appointments to fill vacancies in elective offices.

Section 27.0802 ("Deadline for Filing Application Forms"). Subsection (c) has been added to clarify the deadlines for application forms when there is a vacancy in the office of the Mayor or City Attorney. Minor amendments clarify deadlines when a resignation takes effect immediately.

Section 27.0803 ("Notice to be Published by Clerk"). Subsection (c) has been added to clarify when the City Clerk must publish a notice of the vacancy, including information on the application process, when there is a vacancy in the office of the Mayor or City Attorney.

Section 27.0804 ("Application Forms and Requirements") has been amended to delete the requirement for a medical certification and the requirement that the applicant submit a nominating petition with signatures from fifty registered voters. The medical certification is being deleted so that requirements are uniform for candidates, officeholders and applicants, since no other officeholders in the City are required to get this certification. The requirement that an applicant submit nominating signatures has been deleted to make this more like other appointments, and to expedite the appointment process. A minor amendment provides that an applicant's statement of qualifications may be up to 500 words in length, rather than 100 words, allowing an applicant a better opportunity to articulate his or her qualifications. Minor amendments clarify the need for the social security number and delete the requirement for information on the marital status of applicants.

Section 27.0805 ("Responsibilities of the City Clerk and Police Department") has been amended to include the responsibilities of the Police Department. This includes the addition of subsection (c) which authorizes the Police Department to conduct a police check of applicants.

Section 27.0806 ("Public Hearing") has been amended to clarify that the public hearing shall be scheduled so that the appointment can be made within the thirty business days of the date of the vacancy.

Section 27.0809 ("Election of Official Following Appointment"). This section has been renamed and subsection (b) has been added to clarify that an individual appointed to fill a vacancy in the office of the Mayor or the City Attorney is eligible to run for that office for the next succeeding term. Although the Charter prohibits an individual appointed by the City Council to fill a vacant City Council district seat from running for office for the next succeeding term, a similar prohibition does not exist for an individual appointed to fill a vacancy in the office of the Mayor or the City Attorney.

Division 9 — Procedure for Filling Vacancies in Elective Offices by Special Election

Section 27.0902 ("Special Election to be Called") has been amended to clarify the time frame for a special election when an election is to be held to fill a vacancy in the office of the Mayor or City Attorney.

Section 27.0907 ("Date to Assume Office"). Subsection (b) has been added to clarify the date a candidate elected to fill a vacancy in the office of Mayor or City Attorney would take office.

SUMMARY

In summary, the City Clerk proposes these amendments to the elections code, Chapter 2, Article 7 of the San Diego Municipal Code. Should you have any questions or comments, please contact Deputy Director Joyce Lane at 533-4024.

Sincerely,


Charles G. Abdelnour
City Clerk

CGA:JL
Attachment

cc: City Attorney
City Manager

Proposed Amendments to San Diego Municipal Code
Related to Elections, Chapter 2, Article 7

DIVISION 2--NOMINATIONS

§27.0213 Signing of Nominating Petitions

(a) [No change in text]

(b) It is unlawful for any individual to sign more than one nominating *petition* for the same office and if he or she does so, his or her signature shall count only for the first nominating *petition* which contains his or her signature and which is filed and in which the signature is used to qualify a candidate.

DIVISION 6--BALLOTS FOR CANDIDATES

§27.0608 Designation to Remain the Same for ~~Primary and General Election~~

(a) [No change in text]

(b) In the case of a *special election* called to fill a vacated *elective office*, the designation of principal profession, vocation or occupation shall remain the same for all purposes of the *special election* and the special run-off election, unless the *candidate*, at least forty-six calendar days prior to the special run-off election, requests in writing a different designation which the *candidate* is entitled to use at the time of the request.

§27.0620 Statement of Candidates' Qualifications

(a) [No change in text]

(b) [No change in text]

(c) The statement may include quotations. A quotation from an individual included in the statement must be authorized in writing by the individual. A quotation from an organization included in the statement must be authorized in writing by the organization. The consent of an organization shall be signed by an officer or other duly authorized representative of the organization. If a quotation is from a publication, a copy of the publication may be provided instead of a letter. Such authorization must be filed at the same time as the statement of qualifications, or the quotation will not be permitted in the statement.

~~(d)~~(e) The statement may include the names of family members. The name of any other individual included in the statement must be authorized in writing by the individual. The name of an organization included in the statement as an endorsement must be authorized in writing by the organization. The consent of an organization shall be signed by an officer or other duly authorized representative of the organization. Such authorization must be filed at the same time as the statement of qualifications or the name will not be permitted in the statement. An organizational reference used as part of the candidate's biographical information is permitted without authorization from the organization.

~~(e)~~(d) [No change in text]

§27.0621 Certain Content Prohibited in Statement of Qualifications

(a) The statement of qualifications shall not refer, either directly by name, or indirectly by title; ~~or description or other allusion;~~ to any other *candidate* or officeholder or to any other *candidate's* or officeholder's qualifications, character or activities, unless such reference is authorized pursuant to Section 27.0620(c).

(b) The statement of qualifications shall not refer, either directly by name, or indirectly by title; ~~or description or other allusion;~~ to any City employee or to a City employee's character or activities unless such reference is authorized pursuant to Section 27.0620(c).

(c) [No change in text]

(d) [No change in text]

(e) [No change in text]

(f) [No change in text]

DIVISION 7--GENERAL PROVISIONS FOR FILLING VACANCIES IN ELECTIVE OFFICES

§27.0701 Purpose and Intent

The Charter of The City of San Diego ~~requires~~ gives the City *Council* the authority to fill a vacancy in the offices of the Mayor and City Attorney within thirty ~~business~~ days by appointment; and failing to do so within that time, the City *Council* is required to immediately cause an *election* to be held to fill such vacancy. The Charter provides that if a vacancy occurs in the office of a City *Council* District and there is one year or less remaining in the term, the City *Council* shall appoint an individual to fill the vacant seat.

If the vacancy occurs with more than one year remaining in the term, the Charter requires the *City Council* to call a *special election* to fill such vacancy. The purpose and intent of this division is to establish uniform provisions for filling a vacancy in any *elective office*.

§27.0709 Term of Office

(a) The term of office for an individual elected to fill a vacancy in the office of a City Council district pursuant to Division 9 of this article shall commence at the time the *City Council* adopts the resolution declaring the results of such *election* to the vacant office, and shall expire at 10:00 a.m. on the first Monday after the first calendar day in December following the next *District* or *City-wide General Election* to fill that office, at the same time that the terms of other *elective officers* expire.

(b) The term of office for an individual elected to fill a vacancy in the office of the Mayor or City Attorney pursuant to Division 9 of this article shall commence at the time the City Council adopts the resolution declaring the results of such election to the vacant office, and shall expire at 10:00 a.m. on the first Monday after the first calendar day in December following the next City-wide General Election to fill that office, at the same time that the terms of other elective officers expire.

~~(b)~~(c) The term of office for an individual appointed to fill a vacancy in the office of a City Council district pursuant to Division 8 of this article shall commence at the time the *City Council* adopts the resolution appointing that officer to fill the vacancy, and shall expire at 10:00 a.m. on the first Monday after the first calendar day in December following the *District* or *City-wide General Election* to fill that office, at the same time that the terms of other *elective officers* expire.

(d) The term of office for an individual appointed to fill a vacancy in the office of Mayor or City Attorney pursuant to Division 8 of this article shall commence at the time the City Council adopts the resolution appointing that officer to fill the vacancy. Any individual appointed to fill such vacancy, shall hold office only until the next regular municipal election, at which time an individual shall be elected to serve for the remainder of such unexpired term. The appointed officeholder's term of office shall expire at the time the City Council adopts the resolution declaring the results of the election and declares that a candidate has been elected to that office.

(e) ~~(e)~~ [No change in text]

DIVISION 8--PROCEDURE FOR FILLING VACANCIES IN ELECTIVE OFFICES BY APPOINTMENT

§27.0801 Purpose and Intent

The purpose and intent of this division is to establish an orderly procedure for the City Council to follow in making any appointment to an *elective office*; and for all individuals interested in being appointed to the vacant office to follow in presenting their applications for consideration by the City Council; and at the same time to allow for public participation in the selection process. If a position is to be filled by appointment, the procedures provided for in this division shall be followed. An appointment to fill a vacancy in any *elective office* shall be made within thirty business days of the date of the vacancy.

§27.0802 Deadline for Filing Application Forms

(a) If a vacancy exists in the office of a City Council district by reason of death or un-excused absences, the deadline for filing application forms with the City Clerk shall be fourteen calendar days after the date of the vacancy, as determined by Section 27.0703(b).

(b) If an ~~actual or expected~~ vacancy exists or will exist in the office of a City Council district by reason of a resignation ~~to take effect at some future time~~, the deadline for filing applications forms with the City Clerk shall be one of the following:

(1) If there are at least fourteen calendar days between the time of the publication required by Section 27.0803 and the date of vacancy, the deadline shall be the calendar day before the vacancy occurs;

(2) If there are fewer than fourteen calendar days between the publication required by Section 27.0803 and the date of vacancy, the deadline shall be fourteen calendar days after the date of publication ~~or after occurrence of the vacancy, whichever first occurs.~~

(c) If a vacancy exists or will exist in the office of the Mayor or City Attorney, the deadline for filing application forms with the City Clerk shall be fourteen calendar days after the date the City Council determines that the *elective office* is to be filled by appointment, pursuant to Section 27.0705(a).

§27.0803 Notice to be Published by Clerk

(a) If a vacancy exists in the office of a City Council district, by reason of death or un-excused absences, and the *elective office* is to be filled by appointment, the City Clerk shall publish within five calendar days of the date of vacancy, as determined by Section 27.0703(b), the following notice in a paper of general circulation within the City of San Diego:

A vacancy exists in the office of ~~(Mayor)~~, (Councilmember, 1st through 8th District); ~~or (City Attorney)~~. Interested applicants may obtain information and forms at the office of the City Clerk, City Administration Building, 202 C Street, San Diego, California. To be considered, applications shall be returned to the office of the City Clerk by close of business, 5:00 p.m. on (insert date fourteen calendar days after the date of the vacancy as determined by Section 27.0703(b)).

(b) If ~~an actual or expected vacancy will exists or will exist~~ in the office of a City Council district by reason of a resignation to take effect at some future time, the City Clerk shall publish within a reasonable time the following notice:

A vacancy ~~will exists~~ (or will exist) in the office of ~~(Mayor)~~, (Councilmember, 1st through 8th District); ~~or (City Attorney)~~ on (date vacancy expected to occur). Interested applicants may obtain information and forms at the office of the City Clerk, City Administration Building, 202 C Street, San Diego, California. To be considered, applications shall be returned to the Office of the City Clerk by close of business, 5:00 p.m. on (insert date of the calendar day before vacancy occurs if at least a fourteen-calendar-day interval exists between publication and date of vacancy; if not, insert date fourteen calendar days after date of publication ~~or fourteen calendar days after occurrence of vacancy, whichever first occurs~~).

(c) If a vacancy exists or will exist in the office of the Mayor or City Attorney, and the City Council determines that the elective office is to be filled by appointment, the City Clerk shall publish within five calendar days of the Council decision to fill the vacancy by appointment, pursuant to Section 27.0705(a), the following notice in a paper of general circulation within the City of San Diego:

A vacancy exists (or will exist) in the office of (Mayor or City Attorney) on (date vacancy expected to occur). Interested applicants may obtain information and forms at the office of the City Clerk, City Administration Building, 202 C Street, San Diego, California. To be considered,

applications shall be returned to the Office of the City Clerk by close of business, 5:00 p.m. on (insert date fourteen calendar days after the date the City Council determines that the *elective office* is to be filled by appointment).

§27.0804 Application Forms and Requirements

Applicants for appointment to *elective office* shall file with the City Clerk on or before the date for return of applications as published by the City Clerk under Section 27.0803 the following:

(a) Background information certified by the applicant that it is true and correct, signed under penalty of California perjury laws, disclosing the following:

(1) Name.

(2) Current address.

(3) Length of residence at current address, and address for the past five years if other than the current address.

(4) Date of birth.

~~(5) Marital status.~~

~~(5)~~ (6) Social Security Number for the purpose of conducting the police check.

~~(6)~~ (7) Business or occupation engaged in during the past five years together with address of and dates of service with each such business or occupation.

~~(7)~~ (8) Branch, dates and rank at discharge of military service.

~~(8)~~ (9) Education starting with high school to highest level attained together with the name of each educational institution attended and any degree or diploma received.

~~(9)~~ (10) Statement of Economic Interests Form 700.

~~(b) A statement signed under penalty of California perjury laws from a medical doctor licensed to practice medicine in the State of California describing in general terms the physical and mental health of the applicant and certifying that~~

~~the applicant is physically and mentally capable of performing the duties of the office the applicant is seeking.~~

~~(b)~~ (e) A statement of qualifications not longer than ~~400~~ 500 words expressing in the applicant's own words the reasons why the applicant believes he or she is qualified for the office.

~~(1) Except for the 100 200 word limit set by Section 27.0804(c), this statement shall conform to the requirements set forth in Sections 27.0620 and 27.0621, as they pertain to the contents of the statement.~~

~~(2) The provisions set forth in Section 27.0622 shall apply, except that if the City Clerk finds a portion of the statement of qualifications to be in violation of any of the restrictions set forth in Section 27.0804 and so notifies the candidate, the candidate may, within one business day from the date of such notice, provide an alternate statement to the City Clerk.~~

~~(d) A petition with the signatures of fifty registered voters in form and content similar to that required by the nomination procedures in this article.~~

~~(c)~~ (e) A statement signed under penalty of California perjury laws that the applicant complies with the requirements of Section 27.0119 and has been a resident and voter of the City in the case of the Mayor or City Attorney, or of the district in the case of Councilmembers other than the Mayor, for at least thirty calendar days prior to the date of making application for appointment.

§27.0805 Responsibilities of the City Clerk and the Police Department

(a) [No change in text]

(b) [No change in text]

(c) The Police Department shall, to the extent permitted by law, access each applicant's criminal history information maintained by the San Diego Police Department or the California Department of Justice, in order to determine whether the applicant is on parole for a felony conviction. The Police Department shall notify the City Clerk of the results of this search.

§27. 0806 Public Hearing

Before any appointment to fill a vacancy in an *elective office* may be made, the *City Council* shall hold at least one public hearing for the purpose of considering the applications for appointment. The hearing shall be scheduled so that the appointment can be made within thirty business days of the date of the vacancy as specified in Section 27.0801. ~~held a reasonable time after the period for filing applications has ended as provided in Section 27.0802. If a vacancy occurs in the office of the Mayor or City Attorney, or in the office of a Council District where there will be less than one year remaining in the term, the date of the public hearing shall be established and set by the City Council in the special meeting required to be held to determine whether the vacancy will be filled by an appointment or special election.~~ A second public hearing may be held if there are additional questions or if additional time for discussion is needed by the *City Council* prior to making the appointment.

§27.0809 Election of Appointed Councilmember Prohibited Official Following Appointment

(a) [No change in text]

(b) Any individual appointed by the City Council to fill a vacant seat in the Office of the Mayor or Office of the City Attorney shall be eligible to run for that office for the next succeeding term.

DIVISION 9--PROCEDURE FOR FILLING VACANCIES IN ELECTIVE OFFICES BY SPECIAL ELECTION

§27.0902 Special Election to be Called

(a) If a vacancy occurs in the office of a City Council district for any reason other than a successful recall *election*, and the vacancy is to be filled by *election*, the *City Council* shall immediately call a *special election* to be held within ninety calendar days of the vacancy, unless there is a regular municipal, statewide, or countywide *election* scheduled to be held within 180 calendar days of the vacancy. If there is a regular municipal, statewide, or countywide *election* scheduled to be held within 180 calendar days of the vacancy, the *City Council* may consolidate the *special election* with that regular *election*.

(b) If a vacancy occurs in the office of the Mayor or City Attorney for any reason other than a successful recall election, and the City Council chooses to fill the vacancy by election, or fails to fill the vacancy by appointment within thirty

business days of the vacancy, the *Council* shall immediately call a *special election* to be held within ninety calendar days of the date the ordinance calling the *election* is adopted, unless there is a regular municipal, statewide, or countywide *election* scheduled to be held within 180 calendar days of the vacancy. If there is a regular municipal, statewide, or countywide *election* scheduled to be held within 180 calendar days of the vacancy, the *City Council* may consolidate the *special election* with that regular *election*.

§27.0907 Date to Assume Office

(a) The A candidate deemed elected to the office of a *City Council* district, at either the *special election* or at the special run-off *election* called by the *City Council* to fill a vacant *elective office* shall be declared elected for the unexpired term of his or her predecessor and shall assume his or her office at the time the *City Council* adopts the resolution declaring the results of such *election* to the vacant office.

(b) A candidate elected to the office of Mayor or City Attorney, at either the *special election* or at the special run-off *election* called by the *City Council* to fill a vacant *elective office* shall be declared elected for the unexpired term of his or her predecessor and shall assume his or her office at the time the *City Council* adopts the resolution declaring the results of such *election* to the vacant office.